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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,412	09/24/2003	Jimmie D. Weaver	2002-IP-007995U1	7925

7590 02/16/2007  
Robert A. Kent  
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EXAMINER
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TUCKER, PHILIP C

ART UNIT	PAPER NUMBER
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1712

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/670,412

Applicant(s)

WEAVER ET AL.

Examiner

Philip C. Tucker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-28, 31-44, 47 and 48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12, 15-28, 31 and 32 is/are allowed.
- 6) ☒ Claim(s) 33, 34, 37-44 and 48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 33, 34, 38-41, 43 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Sjostrom et al., LANGMUIR, volume 17, pages 3836-3843 (2001).

Sjostrom teaches a gel formed from hydrophobically modified hydroxyethyl cellulose, which contains a crosslinking agent, and a surfactant within the scope of the present invention (see Experimental section and Figures 9 and 7). Applicants intended use as a well treating fluid does not distinguish (In re Pearson 181 USPQ 641).

3. Claims 33, 34, 38-41, 43 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosen et al., LANGMUIR, volume 14, pages 5795-5801 (1998).

Rosen teaches a gel formed from hydrophobically modified hydroxyethyl cellulose, which contains a crosslinking agent, and a surfactant within the scope of the

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present invention (see Experimental section and Figure 4). Applicants intended use as a well treating fluid does not distinguish (In re Pearson 181 USPQ 641).

4. Claims 33, 34, 37 and 38-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Rohrbaugh (2003/0180466).

Rohrbaugh teaches a composition which can comprise a hydrophobically modified polymer and surfactant within the scope of the present invention (see paragraphs 0124 and 0169-0170). Such may further comprise a crosslinking agent (see paragraph 0259). The polymer and surfactant would clearly associate as in the present invention. Applicants intended use as a well treating fluid does not distinguish (In re Pearson 181 USPQ 641).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 33, 34 and 37-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohrbaugh (2003/0180466)..

Rohrbaugh teaches a composition which can comprise a hydrophobically modified polymer and surfactant within the scope of the present invention (see paragraphs 0124 and 0171-173). Such may further comprise a crosslinking agent (see

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paragraph 0259). The polymer and surfactant would clearly associate as in the present invention. Rohrbaugh differs from the present invention in that the specific surfactants of claim 44 are not disclosed. However, the surfactant formula disclosed by Rohrbaugh in paragraph encompasses surfactants disclosed in claim 44. It would be obvious to utilize various surfactants encompassed by the formula of Rohrbaugh, including those of claim 44, as surfactants in the composition of Rohrbaugh, given the teaching of Rohrbaugh that such compounds within the scope of the formula are useful as surfactants therein. Applicants intended use as a well treating fluid does not distinguish (In re Pearson 181 USPQ 641).

7. Applicant's arguments have been considered but are not deemed persuasive. Applicant argues that Sjostrom teaches a deswelling of the gel at low concentrations. However, the whole teaching as noted by the title of the article deals with gel swelling, and such swelling is noted in the sections of page 3840-3841 dealing with hydrophobically modified polymers. Contrary to applicant's assertion, if one looks at the molecular weight of the surfactants, the concentrations disclosed in the graphs encompass the about 0.001 to about 0.025% of the present invention. Similar holds true for Rosen. With respect to the radius of gyration, applicants specification at pages 3-4 teach that such is a natural result of association of the hydrophobic polymer with the surfactant. The courts have held that the mere recognition of an inherent property in an old composition does not give rise to patentability (In re Tomlinson 150 USPQ 623).

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Such increases in gyration would be clearly formed in the gels of Sjorstrom and Rosen.

Applicant's statement with respect to the Rohrbaugh reference teaching hydrophilic polymers is not understood. Applicant's invention is dealing with a "hydrophobically modified" polymer. Nowhere does applicant teach that the initial polymer is hydrophobic, nor is it clear that one can make a hydrophobic polymer hydrophobically modified. Rohrbaugh at paragraph 0124 clearly teaches the use of the hydrophobically modified polymers as in the present invention, and thus no distinction is seen. Furthermore, the use of the crosslinking in the composition would be instantly envisaged by one of ordinary skill in the art, by the teaching of the influencing of the drying time by such agent. Thus contrary to applicant's assertion, Rohrbaugh teaches all of the limitations of claim 33, and thus the rejections over such reference are maintained.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

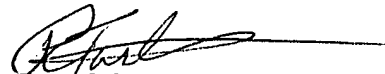
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C. Tucker whose telephone number is 571-272-1095. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Philip C Tucker  
Primary Examiner  
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PCT-4112